Gormac Custom Manufacturing, Inc. ***and*** **United Steelworkers of America, AFL–CIO–CLC.** Case 8–CA–29599

September 20, 2001

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On October 18, 2000, Administrative Law Judge Eric M. Fine issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Gormac Custom Manufacturing, Inc., Lima, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Allen Binstock, Esq., for the General Counsel.
John T. Billick, Esq. and *Seth P. Briskin, Esq*., of Cleveland, Ohio, for the Respondent.
David R. Jury, Esq., of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ERIC M. FINE, Administrative Law Judge. This case was tried in Cleveland, Ohio, on June 15, 2000. The charge was filed by the United Steelworkers of America, AFL–CIO, CLC (the Union) on January 12, 1998, and the complaint issued on February 17, 1998, alleging that Gormac Custom Manufacturing, Inc. (the Respondent) has refused to bargain in violation of Section 8(a)(1) and (5) of the Act. However, this case in essence involves a hearing on the Respondent's objections to conduct affecting an election. The hearing was held pursuant to a Board Order issued on April 17, 2000. No other issues such as jurisdiction are presented in the present posture of the case.

The procedural history is as follows: The Union filed a petition for election on April 29, 1996,[1] seeking to represent certain employees at the Respondent's facility in Lima, Ohio. An election was held on June 14 with 19 votes cast for the Union, 16 against, 1 void ballot, and 4 challenged ballots.[2] There were approximately 45 eligible voters. The Respondent's objections to the election were considered and overruled by the Regional Director without an evidentiary hearing and the Board adopted his recommendations.[3] The Union was certified as the exclusive representative of the unit employees on October 17, 1997. Following the Union's certification, the Respondent refused the Union's request to bargain. The aforementioned charge was filed and the complaint issued. On April 13, 1998, the Board, in this proceeding, granted the General Counsel's Motion for Summary Judgment finding that the Respondent refused to bargain in violation of Section 8(a)(5) of the Act.[4] On June 18, 1998, the Board filed an application for enforcement of its order with the United States Court of Appeals for the Sixth Circuit. The court issued a decision on September 3, 1999, at 190 F.3d 742, in which the majority of its three-member panel reversed the Board's decision and remanded the matter for an evidentiary hearing.

Pursuant to the court's order, the Board, on April 17, 2000, issued an order requiring a hearing on the Respondent's election objections before an administrative law judge, "in accordance with the court's opinion." The Respondent had filed three related objections to the election in the representation proceeding and they read as follows:

> 1. During the lunch break, within three hours of the June 14, 1996 election, the United Steelworkers of America ("Union") distributed a memorandum that listed the names and signatures of thirty-one Gormac employees, who were purportedly voting for the Union. Further, the memorandum stated that all of the employees listed had given the Union permission to use their signatures on subsequent leaflets.
>
> 2. This document, released prior to the start of the election, misrepresented the Union's majority status, created a false impression of Union support, and violated the confidentiality of the showing of interest. Gormac had insufficient opportunity to respond.
>
> 3. As the investigation will demonstrate, the Union's unauthorized use of employees' signatures was tantamount to forgery, and the deceptive use of these signatures interfered with the employees' fair and free choice in the election.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge's decision was pursuant to a remand from the Sixth Circuit Court of Appeals. Therefore, the judge's decision should be entitled "Supplemental Decision."

[1] All dates are in 1996 unless otherwise indicated.

[2] The challenges were subsequently resolved in such as manner so as not to affect the outcome of the election. A revised tally of ballots issued on October 8, 1997, revealing that 20 votes were cast for the Union, with 16 against, rendering the 3 remaining challenged ballots as insufficient to affect the results of the election.

[3] The Board's decision is reported at 324 NLRB 423 (1997).

[4] The Board's decision, reported at 325 NLRB No. 103 (not reported in Board volumes).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Union and the Respondent, I make the following

FINDINGS OF FACT

I. THE WITNESSES AND DOCUMENTARY EVIDENCE

Dennis Brubaker was the only witness called by the Union during this proceeding. He began working for the Union in March in a position he described as "casual." Prior to that time, Brubaker had extensive experience as a local union official. At the time of the hearing, he was employed by the Union as a "permanent" staff representative. Brubaker began working on the organizing campaign at the Respondent's facility in early April. He joined Wayeman Free, an organizer for the Union, in this venture.[5] Brubaker and Free reported to Mike Krivosh, an international organizer. Krivosh worked out of Pittsburgh, Pennsylvania, and was a part-time participant in the Union's election campaign.[6] Shortly before the June 14 election, Jeff Abbey also began working on the campaign in the Union's behalf.[7] Brubaker also named two other people who aided the Union in its organizing effort at the Respondent.

Brubaker testified in a credible fashion to the following: On April 20, the Union held a meeting at a truck stop near the Respondent's facility. Brubaker identified the first page of a three-page petition. This page contained 10 signatures and the three pages contained 31 signatures in total. The top of each page of the petition (the Union's petition) contained the following statement in typewritten blue ink.

> United Steelworker(s) of America, AFL–CIO, CLC
>
> I hereby authorize the United Steelworkers of America to represent me for the purpose of collective bargaining with my employer. This further authorizes the Union to send my name to the National Labor Relations Board and sign my name to union leaflets.

The Union's petition thereafter contained separate lines for an employee's printed name, signature, address, phone number, shift, and department. According to Brubaker, Krivash brought the first page of the petition to the April 20 meeting. There were about 10 or 12 other people at the meeting in addition to Krivash. During the meeting, Krivash stated that the Union was going to use the Union's petition throughout the campaign to get recognition. Krivash stated that the campaign would be out in the open. Krivash stated that he wanted the employees to sign the Union's petition and for them to get others to sign it.

Brubaker witnessed Respondent employee Alfred Myers sign the Union's petition on April 20. Brubaker knew Myers at the time. Brubaker also saw other people sign the petition at the meeting, but he could not identify them. Myers' signature is the first appearing on the Union's petition, followed by six other names dated April 20. Brubaker also witnessed Respondent employee Rocko Patrone sign the petition on April 22.

The Union held another meeting on April 24, where it made plans to seek recognition from the Respondent on April 26. Brubaker testified that he saw two of the three pages of the Union's petition at the April 24 meeting, with both pages having the same blue typewritten inscription at the top of the page. On April 26, Krivosh, Brubaker, and Free met with between 22 and 25 employees at the plant. The group went to Respondent President Donald Gorgei's office and he came out to meet with them.[8] Krivosh attempted to hand Gorgei a letter, but he refused to accept it. Krivash then read it to Gorgei. The letter stated that the Union represented a majority of the Respondent's employees in a specified bargaining unit and demanded recognition. It stated that the Union was prepared to submit "signed authorization petitions" for a third-party check to verify the Union's majority. The letter also stated that, "a majority of workers are registering their protest of the termination of Jim Shingleton." Gorgei refused to recognize the Union, which subsequently filed its election petition.

Brubaker identified a union leaflet that he first saw the day of the June 14 election. Abbey gave it to Brubaker outside the Respondent's plant. Brubaker did not circulate the leaflet (the Union's leaflet), nor did he see it circulated.[9] The Union's leaflet contains large handwritten print at the top which states:

> We're the Majority!
> We're Voting Yes!*

The leaflet then contains what appears to be copies of the 31 signatures that had been placed on the Union's petition. Following the signatures, the one-page leaflet states in smaller print than that set forth at the top of the page:

> * The names listed on this leaflet represent Gormac workers who authorized the USWA to use their names on union leaflets.

The June 14 election was held during the hours of 2:30 to 3:30 p.m. Gorgei credibly testified that he first saw the Union's leaflet on the day of the election at about 1:30 p.m. John Gorda, the Respondent's production manager at the time, brought the document to Gorgei's office. Gorda reported to Gorgei that the document had been distributed to the production workers during lunch hour which was around 12 to 12:30 p.m.[10] Gorgei testified that on receipt of the document that he was "quite shocked" because the election was supposed to be a

[5] Free was still in the Union's employ at the time of the hearing.

[6] Krivosh was no longer in the Union's employ at the time of the hearing.

[7] Abbey was employed by the Union in Indiana at the time of the hearing.

[8] The number of employees in attendance was based on Brubaker's credited testimony. When Gorgei, who also testified, was initially asked if he remembered the number of employees who came to his office that day, he replied, "No, I don't." I therefore find that Brubaker's estimate of the number of employees to be more reliable to Gorgei's subsequent claim that only about 1-1/2 dozen people showed up. As set forth above, including consideration of his demeanor, I have concluded that Brubaker testified in a credible fashion.

[9] The Respondent inaccurately states at pp. 8 to 9 in its posthearing brief that Brubaker "confirmed that the Union was passing out the leaflet both inside and outside the facility. [Tr. 156.]" Rather, Brubaker testified at the cited page of the transcript that he did not see anyone distributing the leaflet.

[10] Gorda did not testify in these proceedings. He is an admitted agent and statutory supervisor of the Respondent and he is listed as the general manager in the complaint.

secret ballot and he had been handed a document that said that 31 people were voting yes. Gorgei was unsure of whether he should have had the document in his possession. He testified that he could not reach his attorney to inquire about the document at that time. As a result, Gorgei just placed the leaflet in his desk.

Gorgei testified that 39 of the 40 people, who voted in the election, were current employees when they voted. Gorgei testified that five people did not vote, that one of them was out of town on the day of the election, and that another was on vacation although he was in town. Gorgei could not state whether the other three employees who failed to vote were actually at work on the day of the election.

The Respondent called Mark Kelly as a witness. Kelly was in the Respondent's employ at the time of his testimony as well as during the time of the election. Kelly identified his signature, dated April 24, on the second page of the Union's petition. Kelly testified as follows: Kelly signed the Union's petition in the Respondent's parking lot on the hood of then welder Al Meyers' car. Meyers told Kelly that, "we would like for you to sign this for the Union to represent us and we need this for the amount of people needed to authorize them to come in to represent us for negotiations." Kelly testified that at the time that he signed the petition it contained the writing at the top in typewritten blue ink authorizing the Union to represent him for collective bargaining and to sign his name on union leaflets. Kelly read the Union's statement at the time that he signed the petition. Around 1 week after he signed the Union's petition, Kelly signed an authorization card. Kelly could not recall who gave him the card but stated that when he signed it he was aware that it was to authorize the Union to represent him during negotiations.

Kelly first saw the Union's leaflet in the plant lunchroom about 2 hours before the June 14 election. Kelly could not recall who gave it to him. Kelly saw other employees with copies of the document. Kelly testified that he never signed a petition that looked like the Union's leaflet. Kelly testified that when he saw the Union's leaflet it made him angry because he had not told anyone how he was going to vote. Kelly acknowledged that when he saw the leaflet he thought it was a Steelworkers' document, and that he did not feel bound by the leaflet's representations as to how he should vote.

It was stated in the Regional Director's July 25 "Report on Objections and Challenged Ballots," that the Respondent submitted affidavits of three employees in support of its objections. These same affidavits were tendered into evidence during this proceeding. They are one-page typewritten documents, each notarized on June 21 by Gorgei's secretary, Mary Lou Zimmermann. The affidavits are signed by then Respondent employees Harry Stitt Sr., Daniel Fraser, and Thomas Jones. Aside from the affidavits being signed by different individuals they are identical documents. They all read, in pertinent part, as follows:

> 1. I am employed by Gormac Custom Manufacturing, Inc.
>
> 2. The information contained in this affidavit is based upon personal knowledge. I am giving this affidavit voluntarily and of my own free will.
>
> 3. On June 14, 1996, I voted "No" in the election involving the United Steelworkers of America (USWA or Union) held at the Gormac plant.
>
> 4. A few hours prior to the election, a Union leaflet was distributed that listed my name and signature, and stated that I was voting "Yes" in the election.
>
> 5. I never authorized the USWA to use my name in conjunction with pro-Union leaflets. I never signed a document that resembled the leaflet, and my signature on the leaflet is either a forgery, or copied from a petition distributed several months ago. At the time I signed the petition, I was told that my signature would be confidential, and that the petition would only be used to obtain a union representation election.

Stitt, Fraser, and Jones were called as witnesses by the Respondent during the current hearing. They were no longer in the Respondent's employ. Relevant portions of their testimony is set forth or summarized below:

Stitt worked for the Respondent until he retired. His recollection concerning the events around the June 14 election was very hazy. He testified as follows on direct examination:

> Q. Mr. Stitt, prior to the election on June 14th, were you ever asked to sign a union authorization card or a petition?
>
> A. Just a card, is all—
>
> . . . .
>
> Q. Do you remember who gave you the authorization card?
>
> A. Jim Tilling, or something like that.
>
> Q. Jim Shingleton?
>
> A. Shilling.
>
> . . . .
>
> Q. Did you read the card?
>
> A. No.
>
> Q. What if anything did Mr. Shingleton say to you when he handed the card to you?
>
> A. He said all this was for is for when the union gets in that they'd be able to start taking my—uh, union dues out, not to be used for anything else.
>
> . . . .
>
> [By Mr. Billick]:
>
> Q. Did Mr. Shingleton say anything about whether or not your name would be confidential?
>
> A. Yes, he said—
>
> MR. JURY: Object to the form of—
>
> A. —it would be confidential and—
>
> MR. JURY: —the question.
>
> JUDGE FINE: Well, sir, it is leading the witness. Have you exhausted his recollection about the conversation?
>
> MR. BILLICK: I'll ask—I'll ask it a different way.
>
> DIRECT EXAMINATION (CONT'D)
>
> [By Mr. Billick]:

Q. Did you ask Mr. Shingleton or did Mr. Shingleton say anything to you about your signature on that card?

MR. JURY: Object to the form of the question.

JUDGE FINE: I'll sustain it. Can you just ask him what was said during the conversation?

Q. What did Mr. Shingleton say to you when he gave you this card?

A. All he told me it was for authorization so they could start taking my union dues out when the union got in here, and it wasn't to be used for anything else.

Q. Did he say anything else about—

A. No.

Q. —about the signature?

A. He just said "Thank you."

Q. Did he say anything at all about your signature being confidential?

MR. JURY: Object to the form of the question.

JUDGE FINE: Well I'm going to—I'm going to allow it now. He has exhausted the witness' recollection. And whether or not I should credit anything he says, now he's leading the witness, but I'll allow it since he's exhausted it and you can argue I should credit it or not.

MR. BILLICK: I'l say the question again.

DIRECT EXAMINATION (CONT'D)

[By Mr. Billick]:

Q. Did he say anything to you about your signature or your name being confidential when you signed the card?

A. He said it would be confidential, that was for the—for the union dues.

JUDGE FINE: Did he use the word "confidential"?

THE WITNESS: I don't know what he used now.

JUDGE FINE: You don't what?

THE WITNESS: I don't recall what he used.

JUDGE FINE: You don't—do you recall whether he used that word?

THE WITNESS: No. He said he—it's between him and I.

JUDGE FINE: That's what he said?

THE WITNESS: Yeah, something to that, sir.[11]

On cross-examination, Stitt's testimony changed for he admitted for the first time that he also signed the Union's petition. Stitt identified his signature which was the first one on second page of the petition, and it appeared under the Union's blue-typewritten statement of the purpose of the petition. Stitt signed the petition on April 22 and he admitted that the typed blue print was on the petition when he signed it.

Stitt initially testified as follows concerning the petition:

Q. Is this the document that Mr. Shingleton presented to you for your signature?

A. No. I think what he told me this here was so they could send me stuff through the mail, if I ain't mistaken.

Q. Do you recall whether you read the information that was printed at the top of the page before you signed your name to that document, Charging Party's Exhibit 1?

A. What was the question?

Q. Do you recall whether you read the information printed at the top of the page, before you signed that document—

A. No, I don't.

Q. —Charging Party's Exhibit 1?

A. No, because he brought this around at dinner time, and he throwed the stuff down like that and tells you to sign it, it's gonna be confidential, you know, and this—I think he said this one here was just for mail purposes.

Q. Now did you—you testified you also signed a card, is that correct?

A. Right, the same time.

JUDGE FINE: Sir, are you saying you didn't read it or you don't recall whether you read it?

THE WITNESS: I didn't read it.

Q. Now, did Mr. Shingleton tell you not to read it?

A. He didn't tell me nothing, just to put my name on it.

Q. Did he cover up the message at the top of the page?

A. I don't remember, because I had other stuff laying there where he set it. And I was eating my lunch when he did it.

Q. So it's your testimony you signed both Charging Party's Exhibit 1, and a card?

A. Yes.

Stitt testified that he made a habit of reading things before he signed them. However, he stated that he did not read the Union petition "because I was busy eating lunch. I just signed it." While Stitt initially testified that he did not know whether Shingleton covered up the writing at the top of the petition when Stitt signed it. He later testified as follows:

JUDGE FINE: Well he—he testified that he signed it. Let me ask you this, sir. I know you testified that you didn't read the blue writing on the top of it?

THE WITNESS: Correct.

JUDGE FINE: But was it there? Was it—do you remember—

THE WITNESS: It probably was. You know, like I say, he throwed it down and said "Here sign it, it's for"—for—

JUDGE FINE: Did you see that there was writing on top, but you just didn't read it?

THE WITNESS: Yeah, I didn't read it.

JUDGE FINE: But did you see it was there?

THE WITNESS: Yeah.

Stitt testified that he never signed a union petition that said that he was going to vote yes. Stitt testified, on cross-examination, that when he signed the union card and the petition that he told Shingleton that he was going to vote no in the election.

[11] Despite his testimony that he did not read the card, Stitt was shown by the Respondent's counsel the second page of R. Exh. 2, which is a copy of a redacted version of the Union's petition containing Stitt's signature. Stitt testified that the union card looked similar to this document in that, as represented by counsel it, had "the disclaimer language on the top of it and a signature line underneath." In fact the Sixth Circuit noted in its decision that the authorization cards contained the same language as that set forth at the top of the Union's petition. *NLRB v. Gormac Custom Mfg.,* 190 F.3d 742, 745 fn. 5 (6th Cir. 1999).

Stitt testified he did not actually see the complete union leaflet containing the "We're Voting Yes" statement until a couple of days before he testified at the unfair labor practice proceeding on June 15, 2000. Stitt testified that while he had not seen the Union's leaflet, he did have a conversation with Gorgei about his name appearing on a voting yes petition. Stitt explained that Gorda came up to Stitt after the election and stated that Stitt had voted yes. As a result of this conversation, the day after the election Stitt told Gorgei that he had voted no and that he did not like the way the Union was using his name.

Stitt identified the affidavit that he signed on June 21. He testified that it was typed by Zimmerman based on information that Stitt had provided to her. Stitt testified that he made no suggestions as to any changes in the affidavit when it was presented to him for signature. Rather, he just read and signed it.

Fraser testified as follows: Fraser was asked to sign a union authorization card prior to the election, but he declined.[12] He was also asked to sign a union petition, but he refused. He could not recall who asked him to sign the petition. Fraser did sign a petition prior to the election passed out by Respondent employee Rocko Patrone. Patrone told Fraser that the petition was to get a meeting with Gorgei about getting Shingleton reinstated. The petition had nothing to do with the Union and there was typing at the top of the petition that pertained to Shingleton. Fraser denied ever signing a petition prior to the election relating to the Union. However, Fraser later testified that it was his signature and handwriting on the third page of the Union's petition, although he could not remember signing it. Fraser stated that he did not know who gave him the document or whether the writing was on the top of the document at the time that he signed it. Fraser testified that he first saw the Union's leaflet with his signature stating that he would vote yes several hours after the election.

Fraser identified the affidavit that he signed on June 21. He testified that Gorgei asked him if he would sign a paper saying that he did not authorize his signature to be used by prounion officials. Fraser testified that he believed that Gorgei wrote the affidavit and that "I just agreed with what was wrote on it." Fraser testified that before signing the affidavit the only statement that he had made was that he was not in favor of the Union and he did not appreciate his name being used saying that he was in favor of it. He testified that he believed that he made this statement to a coworker.

Jones worked for the Respondent as a lead man at the time of the election. Jones testified as follows: Someone gave Jones a union card but he did not sign it. Prior to the election, Jones signed a petition given to him by an employee named Rocky. Rocky told him that the purpose of the petition was to get Shingleton's job back. When asked if the petition said something on it, Jones replied, "Well, yes. I really didn't read it close." Jones testified that this was the only document that he remembered signing prior to the election. Jones did not recall signing the Union's petition or reading the language that appeared on top of the petition. However, Jones later testified that his name appeared on the Union's petition in blue ink along with his correct address and when asked if it was his handwriting Jones testified, "I would say, yes. You know it looks like I wrote it."

Jones testified that he first saw the Union's leaflet with his signature stating that he would vote yes a few days after the election. Gorgei approached him with a copy of the Union's leaflet and Jones told him that he did not sign it. Jones could not recall telling Gorgei anything else about his signature being on the Union's leaflet. Jones testified that he was not pleased to see his name on the leaflet because he did not want to see the Union come in at that point in time and he did not say that he was going to vote yes. Jones identified the typewritten affidavit that he signed on June 21, and testified that he did not know who wrote it. Jones made no changes to the affidavit and Gorgei and Zimmerman were in the office when Jones signed it.

II. CREDIBILITY

I did not find Respondent witnesses Stitt, Fraser, or Jones, the individuals whose affidavits the Respondent filed to support its objections, to have testified in a reliable fashion. Their testimony was hazy, lacked specificity, and was undercut by their pre-hearing affidavits that the Respondent tendered in support of its objections. The affidavits are identical and contain the following statement, "[M]y signature on the leaflet is either a forgery, or copied from a petition distributed several months ago. At the time I signed the petition, I was told that my signature would be confidential, and that the petition would only be used to obtain a union representation election." Contrary to his affidavit, Stitt when he testified at the hearing at first denied that he ever signed the Union's petition. Rather, he stated that he only signed an authorization card. When he testified without the aid of leading questions, Stitt stated that he was told that the authorization card was to be used to deduct dues if the Union got in, and that it was not to be used for anything else. It was only when the Respondent counsel began to ask him leading questions that Stitt claimed that he was given assurances that his signature on the card would be kept confidential. However, Stitt again back tracked when he was specifically asked if the solicitor used the term confidential by stating, "I don't know what he used now."

Stitt admitted for the first time on cross-examination that he signed the Union's petition. He testified that he was told by the solicitor for the petition that its purpose was to allow the Union to "send me stuff through the mail." There was no claim by Stitt at the hearing that the solicitor told him that the petition would only be used to obtain a union representation election, although Stitt made such a claim in his prehearing affidavit. I would also note that while Stitt claimed that he did not read the petition before he signed it, his name was the first signature on this page of the petition and it appeared directly below clearly

[12] The Respondent inaccurately asserts at p. 14, fn. 12 of its posthearing brief that, "Dan Fraser and Thomas Jones both testified that, like Harry Stitt, they were instructed by a union agent that the authorization card's only purpose was to deduct dues from their paycheck. [Tr. 79; 110.]" In fact Fraser testified in reference to the card, "my concern with it was they wanted—it was for *representation* and—uh, to remove dues from my paycheck." (Emphasis added.) Jones did not deny that he read the union card. Rather, he testified that he did not remember what it said. He went on to state that he was told that it was "to authorize the Union to deduct dues from my wages." However, he never testified that he was told that this was the only purpose for the card as the Respondent contends in its brief.

typed wording in blue ink, which Stitt admitted he saw, setting for the purpose of the petition. Noting that Stitt admitted that he had a habit of reading what he signed, his demeanor on the stand, and the overall unreliability of his testimony, I reject Stitt's claim that he did not read the petition before he signed it, or that he was otherwise told that his signature would be confidential. I also reject Stitt's claim that he told the petition's solicitor that he intended to vote no since he had just signed a document authorizing the Union to represent him.

Fraser's and Jones' testimony at the hearing was even further removed than Stitt's from that contained in their prehearing affidavits. While they stated in their affidavits that they signed a petition to enable the Union to obtain an election, they both testified at the hearing that the only petition that they signed prior to the election was on behalf of a discharged employee. When they subsequently admitted at the hearing that their signature appeared on the Union's petition, there was no claim by either witness that they were told that their signatures were confidential, or that their signatures would only be used to obtain a representation election as they had represented in their affidavits.

Thus, I have concluded that the Stitt, Fraser, and Jones were not told by the union solicitors that their signatures on the Union's petition were confidential, or that the only purpose of the petition was for the Union to obtain an election as alleged in their affidavits. Moreover, I reject Stitt's testimony that he failed to read the Union's petition before he signed it, and as to the representations that he made concerning what the union solicitor told him when he signed the petition. I also reject Fraser and Jones' testimony that they did not know that they signed a petition on behalf of the Union prior to the election since they acknowledged signing such a petition in their affidavits. Finally, I can only conclude that the three employees were well aware of the purpose of the Union's petition when they signed it as it was specified on the document itself. In this regard, "a trier of fact need not accept uncontradicted testimony as true if it contains improbabilities or if there is reasonable grounds for concluding that it is false." See *Medin Realty Corp.,* 307 NLRB 497, 505 (1992), quoting from V*ega Industries,* 207 NLRB 14 (1973). See also *Shore Point Associates,* 280 NLRB 1206, 1210 (1986). Here, for the reasons set forth above as well as considerations of demeanor, I found the testimony of Stitt, Fraser, and Jones not to be worthy of belief.[13]

I do not find the Union's failure to call as witnesses the solicitor's of the Union's petition to rebut Stitt, Fraser, and Jones' testimony to be determinative. The solicitors were identified by the Respondent's witnesses as employees of the Respondent at the time they distributed the Union's petition. Assuming that the solicitors were also agents of the Union for the purpose of soliciting signatures on its petition, they were not employees of the Union nor subject to its control 4 years after the fact at the time of the unfair labor practice hearing. I do not find that an adverse inference is warranted for their failure to appear here. See *Levinston Shipbuilding Co.,* 249 NLRB 1, 11 (1980). Cf. *International Automated Machines,* 285 NLRB 1122 (1987), enfd. mem. 861 F.2d 720 (6th. Cir. 1988).

[13] In reaching these conclusions I have taken into consideration the 4-year time span between Stitt, Fraser, and Jones' testimony at the unfair labor practice hearing and the events concerning the June 1996 election, and the impact the delay may have had on their recollections. Nevertheless, both Fraser and Jones testified that they were mailed copies of their June 1996 affidavits shortly before the hearing and that they read the document on its receipt. While these affidavits were sent to them as an aid to refresh their memories, their testimony did not substantiate the claims made in their prehearing sworn statements. Stitt was not asked at the hearing whether he had also received a copy of his affidavit, although in all probability the Respondent afforded him the same opportunity to read his statement prior to giving his current testimony as it did its two other witnesses.

III. ANALYSIS

A. The Board's Decision

In its initial decision in this matter reported at 324 NLRB 423 concerning the Respondent's objections to the election, the Board rejected the Respondent's contention "that the Petitioner's inclusion of signatures from three unit employees on a pro-Union leaflet distributed on election day was tantamount to a forgery and a breach of confidentiality so as to constitute grounds for setting aside the election." In affirming the Regional Director's conclusion that a hearing was not warranted the Board noted that the three employees had signed a document containing the statement that, "[t]his further authorizes the Union . . . to sign my name to union leaflets."

The Board went on to state:

> The Employer, however, argues that it is entitled, at the least, to an evidentiary hearing on the basis of affidavits it submitted from the employees stating that they were told at the time they signed the document that their signatures would be confidential and that the document would only be used to obtain a representation election. We disagree. Because the document signed by the employees expressly authorized the Petitioner to sign their names to union leaflets, we find that even if oral misrepresentations were made to these employees regarding the confidentiality of their signatures, the use of their signatures on the Union's leaflet cannot be characterized as such a "deceptive campaign practice as to improperly involve the Board and its process, or the use of forged documents which render the voters unable to recognize the propaganda for what it is." *Midland National Life Insurance Co.,* 263 NLRB 127, 131 (1982). Nor do we find that the election-day leaflet can be properly characterized, in the language of the Sixth Circuit, as "a misrepresentation and deception pervasive and artful enough to interfere with employees' fair and free choice to such an extent as to require a new election." *Dayton Hudson Dept. Store v. NLRB,* 987 F.2d 359, 666 (6th Cir. 1993), on remand 314 NLRB 795 (1994), affd. 79 F.3d 546, 550–551 (1996).

B. The Court's Decision

The Sixth Circuit reversed and remanded the Board's decision in the subsequent unfair labor practice proceeding. In doing so, the court panel majority cited the closeness of the election and stated that, "[t]wo things are apparent from this outcome: (1) a switch of several votes would affect the outcome of this close contest, and (2) for some unexplained rea-

son, six of forty-five eligible voters did not vote—some thirteen percent. Had just half of these absentees voted, the outcome might have been different." *NLRB v. Gormac Custom Mfg.,* 190 F.3d 742, 744 (1999). The court also noted that, "[w]e are not concerned in this opinion with the legality of the challenge; we confine ourselves to Gormac's request for a hearing on the fairness of the election itself." Id. at fn. 3.

The court majority went on to state at 746:

> We first note that "[a] party seeking to overturn the results of a representation election bears 'the burden of showing that the election was not conducted fairly,'" see *Maremont* 177 F.3d at 577 (quoting *NLRB v. Superior Coatings, Inc.,* 839 F.2d 1178, 1180 (6th Cir. 1988)), and that "[i]n order to satisfy the burden, the objecting party must demonstrate . . . 'unlawful conduct which interfered with employees' exercise of free choice to such an extent that it materially affected the result of the election.'" Id. (quoting *Shrader's, Inc.,* 928 F.2d at 196). It is well-settled that in cases where "no forgery can be proved, but *where the misrepresentation is so pervasive and the deception so artful that employees will be unable to separate truth from untruth* and where their right to a free and fair choice will be affected," a new election is warranted. *Van Dorn Plastic Machinery Co. v. NLRB,* 736 F.2d 343, 348 (6th Cir.1984), cert. denied 469 U.S. 1208, 105 S.Ct. 1173, 84 L.Ed.2d 323 (1985) [emphasis added].
>
> In *NLRB v. Hub Plastics,* 52 F.3d 608, 612 (6th Cir. 1995), another case where there was no Board hearing on the employer challenges, we expressed therein a particular concern with "the manner of the misrepresentation," rather than its exact content.

The court majority stated at page 747 of the *Gormac* decision that:

> The five factor test often used in deciding this kind of controversy was articulated in *Mitchellace, Inc. v. NLRB,* 90 F.3d 1150, 1155 (6th Cir. 1996). These factors are as follows: (1) the timing of the misrepresentation; (2) whether the employer was aware of the situation and had an opportunity to respond; (3) the extent of the misrepresentation; (4) whether the source of the misrepresentation was identified; and (5) whether there is evidence that employees "actually were affected" by the misrepresentation. Yet another factor that plays a part in our analysis is the closeness of the election; when the election is close, we will use great care in reviewing the case. See *Hub Plastics,* 52 F.3d at 613.

The court majority concluded that applying the above standards, the Respondent did establish the existence of substantial and material factual issues and therefore should have been granted a hearing by the Board. The court noted that four of the five factors in the *Mitchellace* test cut in favor of the Respondent. These include the timing of the issuance of the Union leaflet, made public within 2 to 3 hours of the election. The court stated that, while the timing by itself is not determinative, the closer to the election the inappropriate conduct, the more serious it becomes. The second factor is whether the employer was aware of the communication and had an opportunity to respond. The court stated here that it is doubtful that the Respondent even knew about the flyer at all before the election, since it was posted just a couple of hours prior to the opening of the polls. The court stated that, in any event, the Respondent would not have known that the flyer contained misrepresentations until the three employees came forward a few days after the election and told what they knew.

The court held that the third factor was the most serious, that is the extent of the misrepresentation. The court majority stated that two misrepresentations were allegedly made by the union's representatives in that:

> The first misrepresentation was made to the three employees, when the union promised that their names would be kept confidential and that their signatures would be used only for the purpose of getting an election. Indeed, their signatures ended up being used for a much different purpose than they had envisioned. Though the three employees had signed an authorization card which gave the [Union] permission to use their names on flyers, at no time did they agree to "vote yes" for the union or to allow their signatures to be used to encourage others to "vote yes.". . . Even if the employees had signed this without the alleged promises of confidentiality, this action of using their signatures for purposes which they had not authorized would be highly suspect. Combined with the alleged promises of confidentiality, which we take as true for the purposes of this appeal, the serious nature of the misrepresentations becomes clear. [Id. at 748–749.]

The court majority held that the second misrepresentation was made to the electorate when the flyer with the three employees' names was posted stating that each of the signatories would vote yes. It was stated that "this misrepresentation created a false sense of the extent of union support, which we have found before to be 'precisely the sort of pervasive misrepresentation and artful deceptions that . . . could . . . be the basis for setting aside an election.'" Id. at 749.

It was stated by the court majority that the fourth factor, "whether the source of the misrepresentation was identified, cuts in favor of the union, since the flyer did state, albeit in small print, that the USWA was responsible for it." Id. at 749. However, the court stated the final factor, "whether there is evidence that employees were affected by the misrepresentations, favors *Gormac*." Id. at 749. It was stated that the three employees who tendered the affidavits were affected in that their signatures which they had been promised would have been kept confidential were made public. It was also stated that the false picture of the extent of union support that was created in all probability had an impact on the election. It was noted that the 31 signatures appearing on the Union's leaflet stating that they would vote yes may have influenced the 6 employees who did not vote since the 31 signatures constituted a clear majority out of the 45 eligible voters. The court concluded that the closeness of the election was another factor demonstrating that a hearing should have been granted to the Respondent.

C. Conclusions

As set forth above, the Board, in its order remanding this case directed that the administrative law judge conduct the

hearing "in accordance with the court's opinion." It is my understanding from the Board's direction that I am bound by the Sixth Circuit's opinion as the law of the case. See *Salem Village I,* 288 NLRB 563 (1988), and *Westin Hotel,* 277 NLRB 1506, 1508 (1986). I have concluded that the Respondent has failed to meet its burden of demonstrating that the Union's conduct "interfered with employees' exercise of free choice to such an extent that it materially affected the result of the election." *NLRB v. Gormac Custom Mfg.,* supra at 746. See also *SPX Corp. v. NLRB,* 164 F.3d 297, 305 (6th Cir. 1998).

In *Maremont Corp. v. NLRB,* 177 F. 3d 573 (6th Cir. 1999), the court held that a union's circulation of a vote yes petition in the circumstances of that case was not a sufficient basis to set aside an election. Copies of the petition along with the employee signatures were distributed by the union as preelection handouts. There, the union was accused of obtaining signatures on the petition by misrepresenting to employees that: (a) their signatures would be kept confidential (b) the petition was a signup sheet for T-shirts, and (c) the petition would not be used as a handbill. The court refused to find that the use of the petition was per se objectionable. The court noted that, "a union seeking to represent employees has a different relationship to them that makes pre-election polling less coercive" than the same activity conducted by an employer. The court stated that:

> Substantial evidence supports the conclusion of the hearing officer that the Union's method of obtaining signatures was not so deceptive as to rob employees of their free choice. In *Contech,* this court noted that "[i]f absolute objectiveness and pristine conduct were required in order to sustain an election, then virtually none would survive the rough and tumble of labor management contentiousness." [164 F.3d. at 307–308.] In the present case, *Maremont* essentially argues that an election is voidable whenever a number of employees sign folded pieces of paper presented by union organizers without bothering to check what is on the obscured portion. We disagree, and hold that this is an insufficient basis to overturn an election. [Id. at 578.]

The credited evidence here reveals that the signatures of 31 of the Respondent's employees were obtained on the Union's petition during the period of April 20 to 27. The petition read at the top, in clear blue typewritten ink, "I hereby authorize the United Steelworkers of America to represent me for the purposes of collective bargaining with my employer. This further authorizes the Union to send my name to the National Labor Relations Board and sign my name to union leaflets." As set forth above in the credibility section of this decision, I have concluded that the Respondent has failed to establish that the Union or its agents while soliciting signatures on its petition informed employees that their signatures were confidential, that the petition was only for an election, or that they engaged in any other misleading conduct in the circulation of the petition.[14]

The evidence established that on the day of the June 14 election, the Union circulated a leaflet stating, "We're the Majority! We're Voting Yes!*" The leaflet then contained copies of the 31 employees signatures who had signed the Union's petition. Below the signatures, the leaflet contained the following statement, "The names listed on this leaflet represent Gormac workers who authorized the USWA to use their names on union leaflets."

In its decision to remand the case, the Sixth Circuit noted that it has used a five factor test in deciding this kind of controversy. These factors are as follows: (1) the timing of the misrepresentation; (2) whether the employer was aware of the situation and had an opportunity to respond; (3) the extent of the misrepresentation; (4) whether the source of the misrepresentation was identified; and (5) whether there is evidence that employees "actually were affected" by the misrepresentation. It was stated by the court that another factor in its analysis is the closeness of the election; and that when an election is close, the court will exercise "great care."

The Respondent only presented one employee witness, Kelly, who testified that he saw the Union's leaflet prior to the election. Kelly saw it in the employee lunchroom about 2 hours before the election and he saw other employees reading it at the time. Although their prehearing affidavits, submitted by the Respondent in support of its objections, implied that they saw the Union's leaflet prior to the election, Respondent witnesses Stitt, Jones, and Fraser, who were also its employees at the time of the election, testified that they did not hear about the Union's leaflet until after the election. Kelly's, Stitt's, Jones', and Fraser's signatures appear on the Union's leaflet stating that they would vote yes. All four had signed the Union's petition authorizing the Union to sign their name on union leaflets. These findings go to factors one and five of the court's analysis. First, while the Union's leaflet was distributed a couple of hours before the election, it was not as widely distributed as the Respondent sort to portray by the submission of the employee affidavits. Second, the Union's leaflet would not have affected the outcome of the election pertaining to the votes of Stitt, Jones, and Fraser, as they all testified at the hearing that they were not aware of the leaflet until after the election was over. Their prehearing affidavits also state that they voted against the Union.

The court in its *Gormac* decision also noted that 6 employees out of a potential 45 failed to vote, and that a leaflet containing 31 signatures of employees stating that they were going to vote yes may have convinced these 6 employees not to vote thereby having an impact on the election. As a result of the hearing, there was evidence available to me that was not available to the

[14] This conclusion is bolstered by the testimony of Respondent witness Kelly who testified that he was told by the solicitor when Kelly signed the petition that it was for the Union to represent the employees, and that he read the petition which contained the same information. The Respondent submitted affidavits of three employees to the Region, dated June 21, stating that they were told by employee solicitors that their signing the Union's petition was confidential, and that their signatures were for an election only. However, only one of these employees testified at the hearing, following leading questions, that he was told that his signature was confidential or something to that effect, and none of the employees testified that they were told that their signature was for an election only. For reasons set forth in the credibility section I did not find the testimony of Respondent witnesses Stitt, Jones, and Fraser at the hearing and in their pre-hearing affidavits to be worthy of belief.

court at the time of its remand. Respondent President Gorgei testified that it was five employees who did not vote in the election, and that one of them was out of town on the day of the election. Gorgei also testified that another of these employees was on vacation. Moreover, while the Respondent was aware at the time of the hearing that one of the factors the court considered at the time of the remand was the potential of the Union's leaflet to dissuade employees from voting, Gorgei also testified that he was not aware of whether the other three employees who failed to vote where actually at work the day of the election. In these circumstances, noting that three of the four of the Respondent's employee witnesses did not see the Union's leaflet until after the election, I have concluded that the Respondent has failed to sustain its burden of proof in establishing that the employees who did not vote failed to do so as a result of the Union's leaflet. I would also note that the Respondent failed to establish that the Union's leaflet actually affected employees who voted. In this regard, Kelly, the only employee who testified that he saw the Union's leaflet before the election, stated that he understood that it was a Steelworker's document and that he did not feel bound to vote yes because of the representation on the Union's leaflet containing a copy of his signature. Thus, the Respondent has failed to sustain its burden that the Union's distribution of the leaflet affected employees, or interfered with the exercise of their free choice to the extent that it materially affected the result of the election. See *NLRB v. Gormac Custom Mfg.,* supra at 746.[15]

The court noted in its remand in *Gormac* that the timing of the Union's distribution was not in and of itself determinative of the merits of the Respondent's objections. The evidence here revealed that Respondent President Gorgei received a copy of the Union's leaflet about 1 hour before the June 14 election began, but Gorgei elected not to respond because he was unable to consult with the Respondent's counsel. While at first blush, the timing of the Union's distribution may cut in favor of the Respondent in terms of its ability to respond, I do not view the Respondent's ultimate response to the Union's leaflet to require sympathy here.

In this regard, the evidence disclosed that following the election, Stitt was contacted by Gorda, and that Fraser and Jones were contacted by Gorgei about either their signatures appearing on the Union's leaflet or about giving their affidavits or both. Thereafter, the Respondent prepared identical typewritten affidavits and presented them to the employees for their signatures. The employees' testimony at the hearing revealed that they all signed the affidavits in Gorgei's secretary's presence without suggesting any changes. Fraser testified that Gorgei asked him to sign the affidavit and that he thought that Gorgei drafted it. Jones testified that both Gorgei and Zimmerman were present when he signed the affidavit. The three affidavits were submitted by the Respondent to the Region in support of its objections. They begin in a misleading fashion as to when these employees learned of the Union's leaflet. They state that, "the information contained in this affidavit is based upon [the affiant's] personal knowledge." Yet, it is stated in paragraph 4 of each of the affidavits, that "[a] few hours prior to the election, a Union leaflet was distributed that listed my name and signature, and stated that I was voting 'Yes' in the election." The implication is that each of these witnesses saw the Union's leaflet shortly before the election. However, each of these employees testified at the hearing that they did not become aware of the union leaflet until after the election. In fact, Stitt testified that he did not actually see the leaflet until a few days prior to his testimony at the unfair labor practice hearing which took place 4 years after the 1996 election. I have also concluded that the affidavits were written in prose that differed from the manner in which the employees spoke at the hearing. Moreover, I have concluded that the affidavits used terms in reference to the circulation of the Union's petition such as "confidential" and "that the petition would only be used to obtain a union representation election," that were not suggested by the employee witnesses or verified by their testimony at the unfair labor practice hearing.

Finally, as to the extent of the Union's alleged misrepresentation, the court in *NLRB v. Gormac Custom Mfg.,* supra, noted in its remand that, "[t]hough the three employees had signed an authorization card which gave the [Union] permission to use their names on flyers, at no time did they agree to 'vote yes' for the Union or to allow their signatures to be used to encourage others to 'vote yes.'' The court stated that even "if the employees had signed" "without the alleged promises of confidentiality this action of using their signatures for purposes they had not authorized would be highly suspect." Id. at 748–749. I have concluded that that the three employees in question signed a petition circulated by coworkers authorizing the Union to represent them for the purposes of collective bargaining and for the Union to sign their names on union leaflets. The Respondent has failed to establish its claims that the employees were told that their signatures were confidential or for an election only when they signed the Union's petition. As the court pointed out on remand, the Union's petition did not specifically state that the employees agreed to vote for the Union, nor was the language authorizing the use of employees signatures on union leaflets as specific as it might have been. On the other hand, the petition did state that the employees authorized the Union to represent them. Implicit in such a commitment was that the employees, at least at that point in time, had intended to vote for the Union. Moreover, implicit in the employees' agreement that the Union could sign their name to union leaf-

[15] In *Maremont Corp. v. NLRB,* supra at 578–579, the court noted that the hearing officer found that the union's handbill did not interfere with the employees' free and fair choice because it appeared to be a typical partisan leaflet used by a party to an election and that no evidence was presented that the contents of the handbill tainted the election by misleading employees. The court stated that 77 more employees signed the "Vote Yes" petition than voted for the union indicating that the petition or atmosphere surrounding the election did not serve to taint the employee's free choice. It was stated that even if the 77 employees were mislead when they signed the petition, it tends to show that they exercised their free choice when they finally decided whether to be represented by the union. Here, 31 employees signed the petition, with only 20 voting for the Union. The court's rationale in *Maremont,* as buttressed by Kelly's testimony and the Union's leaflet, which clearly identified the Union as it source, serve to confirm my conclusion that the Union's leaflet was understood by the employees to be a partisan document and it did not serve to taint the employee's free choice.

lets was that the Union intended to use their names to help garner the support of other employees for the Union to obtain recognition as the collective-bargaining representative. While not all of the employees who signed the Union's petition voted for the Union at the time of the election, I do not view the Union's actions in circulating its leaflet to the employees based on the commitments it had obtained in its petition to be the type of artful or pervasive misrepresentation that interfered with or materially impacted on the election.

Indeed, the Sixth Circuit in *Gormac,* supra, appeared to acknowledge in its remand that something more than the mere use of the employees' signatures on the Union's leaflet was required to overturn the election results here because the court majority stated towards the end of its opinion that:

> If, indeed, union representatives promised employees that their signing of the "petition" or card would be kept confidential, and/or that its purpose was merely to be used to *obtain* a fair election, or that their names would not be used as an affirmative final vote indication, then such use as was actually made by the union in this case would be a gross misrepresentation and a deliberately deceitful tactic. We would conclude, in such event—although we certainly do not infer or presume that it happened the way Gormac argues—that the union was guilty of pervasive deception and artful misrepresentation, akin to forgery, enough to interfere with the free and fair choice of the employees. [Id. at 751.]

Since, I have concluded that Respondent has not met its burden of establishing that any of the forgoing conduct specified by the court occurred, I have concluded that its objections to the election should be denied. Moreover, I have concluded that the Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Union since December 31, 1997.

CONCLUSIONS OF LAW

1. Following an election held on June 14, 1996, the Union was certified on October 17, 1997, as the exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees employed at the Employer's North Lima facility, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

2. By refusing on and after December 31, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, I recommend that it to cease and desist from engaging in such conduct, and that it be ordered to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, I recommend that the initial period of the certification begin on the date that the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962); *Lamar Hotel,* 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Gormac Custom Manufacturing, Inc., Lima, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL–CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees employed at the Employer's North Lima facility, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in North Lima, Ohio, copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the certification of the Union issued by the Board on October 17, 1997, be, and the same is extended for the period of 1 year commencing from the date on which the Respondent begins to comply with the terms of this Order.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL–CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time production and maintenance employees employed at our North Lima facility, excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act.

GORMAC CUSTOM MANUFACTURING, INC.